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RANDALL, *et al.* v. HARRISON *et al.*

June 10, 1909.

[64 S. E. 992.]

Wills (§ 597*)—Construction—Estates Created.—A will gave testator's wife for life all his real and personal estate that should be left after paying his debts, with power, however, to use any and all of the principal as well as the interest of such remaining property, if necessary to supply her necessities, and provided that, if anything was left after the wife's death, it should go to certain others. Held that, subject to testator's debts, the wife took a fee-simple estate in the real estate and an absolute estate in the personal property.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 1319; Dec. Dig. § 597.* 13 Va.-W. Va. Emc. Dig. 826, et seq.]

Appeal from Circuit Court, Cumberland County.

Bill by John P. Branch against Harriet H. Harrison, individually and as executrix of Randolph Harrison, Jane R. H. Randall, and others. Decree for complainant, and defendant Randall and another appeal. Affirmed.

Willis B. Smith and *R. T. W. Duke*, for appellants.

W. H. Mann, Christian, Gordon & Christian, B. B. Woodson, and *Wm. M. Smith*, for appellees.

WHITTLE, J. This appeal involves the construction of the following clause of the will of Randolph Harrison, deceased:

"I give and bequeath to my dear wife, Harriet H. Harrison, for and during her natural life, all my estate real and personal that may be left after paying my just debts. And as I know the unstable and fluctuating value of real estate in Virginia and the difficulty of selling landed property at anything like a fair valuation, and that there may be yet a further shrinkage, so that there may not be enough left from the proceeds after paying my debts and defraying all charges to give her, the said Harriet H. Harrison, a decent maintenance from the interest in such residue (if it should be necessary to sell all my property); and as I deeply regret having induced my wife to relinquish her right of dower to secure a debt of six thousand dollars (\$6,000.00) due Messrs. Wyman and Byrd, I hereby empower her, my wife before named, to use any and all the principal, as well as the interest of the amount that may be left as above stated after settling up my estate, but it is my wish and injunction, which I know will be faithfully carried out by my dear wife, that the principal of any amount left from my estate be drawn upon only to supply her

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

own necessities. I hold that property should revert to the source whence it came; accordingly it is my desire that anything that may be left after the death of my wife should be divided amongst my brothers and sister J. N. Harrison, and the children of my brother B. H. Harrison, *per stirpes*."

The circuit court decreed that, subject to the debts of the testator, his widow took a fee-simple estate in the lands and an absolute estate in the personal property whereof he died seised and possessed.

The principle here involved has been so repeatedly decided by this court that we feel that further discussion of it can serve no good purpose. The case is ruled, and the decree of the circuit court sustained, by a long line of decisions, of which *May v. Joynes*, 20 Grat. 692, *Farish v. Wayman*, 91 Va. 430, 21 S. E. 810, *Robertson v. Hardy's Adm'r*, 23 S. E. 766, 2 Va. Dec. 275, *Brown v. Strother*, 102 Va. 145, 47 S. E. 236, *Hawley v. Watkins*, 109 Va. —, 63 S. E. 560, *Rolley v. Rolley*, 109 Va. —, 63 S. E. 988, and *Hunter v. Hicks* (decided at the present term) 64 S. E. 988, are illustrations.

The decree appealed from follows these precedents, and must be affirmed.

Affirmed.

HARRISON, J., absent.

Note.

For an interesting article dealing with the effect upon the rule of construction in *May v. Joynes* of the recent amendment of V. C. (1904), § 2418, by Acts of 1908, p. 187, see 14 Va. Law Reg. 161. That amendment seems to have been intended to apply to such cases as this and *Hunter v. Hicks*, digested post, but of course was too late to affect these cases.